UNPUBLISHED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION

LAURA SALZ, Plaintiff, vs. STELLAR INDUSTRIES, INC.; and GEORGE LALLAK, in his individual, and corporate capacity, Defendants.	No. C02-3095-PAZ **ORDER ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

On January 5, 2004, the defendants Stellar Industries, Inc ("Stellar") and George Lallak ("Lallak") filed a motion for summary judgment, statement of material facts, and supporting brief.[1] (Doc. No. 17) On February 2, 2004, the plaintiff Laura Salz ("Salz") filed a resistance to the motion, a brief in support of the resistance, a response to the defendants' statement of material facts, and a statement of material facts. (Doc. No. 23) On February 9, 2004, Salz filed an appendix in support of her resistance to the motion for summary judgment. (Doc. No. 24) On February 18, 2004, the defendants filed a response to Salz's statement of material facts. (Doc. No. 26) On February 23, 2004, the defendants filed a reply brief. (Doc. No. 28) On March 9, 2004, Salz filed a

[1]The defendants did not file separately an appendix, as required by Local Rule 56.1(a)(4) & (e). Instead, they attached 26 exhibits to their statement of material facts. The court will consider the exhibits to be the defendants' appendix.

supplemental appendix (Doc. No. 31), an amended and substituted statement of material facts (Doc. No. 32), and a supplemental statement of material facts (Doc. No. 33).

In their motion for summary judgment, the defendants requested oral argument. The request was granted, and on March 10, 2004, the court heard telephonic arguments from the attorneys for the parties. Mark D. Sherinian appeared on behalf of Salz, and Darrell J. Isaacson appeared on behalf of Stellar and Lallak.

The court has considered the submissions and arguments of the parties carefully, and turns now to consideration of the issues raised by the defendants in their motion.

I. INTRODUCTION

Salz was employed at Stellar from March 12, 1999, until July 3, 2001, when her employment was terminated. Lallak was her supervisor, and participated in the decision to terminate her employment.

In this action, Salz claims she was discharged from her employment (1) because of gender discrimination, and in retaliation for her complaints of gender discrimination, in violation of 42 U.S.C. § 2000, *et seq*. (Count I); (2) because of disability discrimination, and in retaliation for her complaints of disability discrimination, in violation of the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq*. ("ADA") (Count II); and (3) because of gender and disability discrimination and retaliation, in violation of the Iowa Civil Rights Act of 1965, as amended, Iowa Code chapter 216 ("ICRA") (Count III). (*See* Complaint, Doc. No. 1.) The defendants deny Salz's claims.

In Count I, Salz asks for compensatory and punitive damages from Stellar. In Counts II and III, she asks for compensatory and punitive damages from the "Defendant," without specifying whether she is seeking relief from one or both of the defendants. During oral arguments on the motion for summary judgment, Salz's attorney clarified that

Salz is seeking compensatory and punitive damages from Stellar in Count I; she is abandoning Count II; and in Count III, she is seeking compensatory damages from both defendants for gender discrimination and retaliation, but she is abandoning her disability discrimination claim in Count III. Accordingly, the defendants' motion for summary judgment is **granted** as to Count II, and as to the claim for disability discrimination in Count III.

Prior to filing this action, Salz exhausted the appropriate administrative remedies and obtained right-to-sue determinations from both the federal Equal Employment Opportunity Commission and the Iowa Civil Rights Commission. (*See* Doc. No. 1, Exs. 3, 4, & 5).

II. FACTUAL BACKGROUND

Salz was hired at Stellar on February 12, 1999, for a temporary clerical position. On March 1, 1999, she took a permanent position in the saw department. Her beginning wage in the saw department was $8.00 per hour. Salz's normal duties in the saw department included blueprint reading, tape-measuring, and cutting with saws, but occasionally she also was asked to update part books. At all material times, her supervisor in the saw department was Lallak.

After beginning to work in the saw department, Salz was given good performance ratings and raises. By the time of her one-year anniversary, her pay had increased to $10.00 per hour. After that, according to Lallak, the quality of her work deteriorated, until Stellar terminated her employment on July 3, 2001. She was earning $10.25 an hour at the time of her termination.

Salz argues her gender was a substantial factor in the termination of her employment. As evidence of this, she cites statements make by Lallak and co-worker Josh Haugen, and her own testimony.

Josh Haugen testified at a deposition that he was irritated at the way Lallak treated Salz. Haugen testified Lallak "always passed off the shit work to [Salz]." He testified, "[Salz] was kind of the joke per se, I guess at the break table. She was a female working in a primarily male-dominated job, and they just didn't accept her." Haugen testified he remembered Lallak "specifically stating that [Gary Bomstad, a Vice President and Lallak's immediate superior] didn't want [Salz] back there and [Lallak] was told that he had to get [Salz] to quit her job" because "they didn't want a woman working back there." Haugen also recalled hearing Lallak participate in discussions at the break table about why female employees should not be working in the saw department.

Lellak testified he made the decision to terminate Salz with the approval of Charlie Conroy, who was Vice President of Production, and Gary Bomstad. Lallak admitted he had told Salz that a particular job she was performing "was not a job for a woman."

According to Salz, Lallak told her that her job "was not a woman's job" and "was not woman's work." She also testified that when she asked Lallak why she was being paid less than two male co-employees whom she believed were less experienced than she, Lallak responded in one case that "he's got a family to feed," and in the other that "he's got a new baby."

Salz filed a complaint with the Iowa Civil Rights Commission on May 3, 2001. On July 3, 2001, the defendants terminated Salz's employment.

III. STANDARDS FOR SUMMARY JUDGMENT

Rule 56 of the Federal Rules of Civil Procedure governs motions for summary judgment, and provides that either party to a lawsuit may move for summary judgment without the need for supporting affidavits. Fed. R. Civ. P. 56(a) & (b). Rule 56 further states that summary judgment

> shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is *no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law*.

Fed. R. Civ. P. 56(c) (emphasis added). "A court considering a motion for summary judgment must view all the facts in the light most favorable to the nonmoving party, . . . and give [the nonmoving party] the benefit of all reasonable inferences that can be drawn from the facts." *Lockhart v. Cedar Rapids Comm. Sch. Dist.*, 963 F. Supp. 805, 814 (N.D. Iowa 1997) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986)). A genuine issue of material fact is one with a real basis in the record. *Lockhart*, 963 F. Supp. at 814 n.3 (citing *Matsushita*, 475 U.S. at 586-87, 106 S. Ct. at 1355-56).

The party seeking summary judgment must "'inform[ ] the district court of the basis for [its] motion and identify[ ] those portions of the record which show lack of a genuine issue.'" *Lockhart*, 963 F. Supp. at 814 (quoting *Hartnagel v. Norman*, 953 F.2d 394, 395 (8th Cir. 1992)); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 2552-53, 91 L. Ed. 2d 265 (1986). Once the moving party has met its initial burden under Rule 56 of showing there is no genuine issue of material fact, the nonmoving party, "by affidavits

or as otherwise provided in [Rule 56],[2] must set forth specific facts showing that there is a genuine issue for trial." Rule 56(e); *Lockhart*, 963 F. Supp. at 814 (citing *Matsushita*, 475 U.S. at 586, 106 S. Ct. at 1356). "Mere allegations not supported with specific facts are insufficient to establish a material issue of fact and will not withstand a summary judgment motion. Only admissible evidence may be used to defeat such a motion, and affidavits must be based on personal knowledge." *Henthorn v. Capitol Communications*, ___ F.3d. ___, 2004 WL 405730, at *2 (8th Cir., March 5, 2004) (internal citations omitted).

Addressing the quantum of proof necessary to successfully oppose a motion for summary judgment, the United States Supreme Court has explained the nonmoving party must produce sufficient evidence to permit "'a reasonable jury [to] return a verdict for the nonmoving party.'" *Lockhart*, 963 F. Supp. at 815 (quoting *Anderson v. Liberty Lobby*, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 2510, 91 L. Ed. 2d 202 (1986)). Furthermore, the Court has held the trial court must dispose of claims unsupported by fact and determine whether a genuine issue for trial exists, rather than "weigh the evidence and determine the truth of the matter." *Lockhart*, 963 F. Supp. at 815 (citing *Anderson*, 477 U.S. at 249, 106 S. Ct. at 2510-11; *Celotex*, 477 U.S. at 323-24, 106 S. Ct. at 2552-53; and *Matsushita*, 475 U.S. at 586-87, 106 S. Ct. at 1355-56).

Thus, if the defendants show no genuine issue exists for trial, and if Salz cannot advance sufficient evidence to refute that showing, then the defendants are entitled to judgment as a matter of law, and the court must grant summary judgment in the defendants' favor. If, on the other hand, the court "can conclude that a reasonable trier

[2] *E.g.*, by "affidavits . . . supplemented or opposed by depositions, answers to interrogatories, or further affidavits." Fed. R. Civ. P. 56(e).

of fact could return a verdict for [Salz], then summary judgment should not be granted." *Lockhart*, 963 F. Supp. at 815 (citing *Anderson*, 477 U.S. at 248, 106 S. Ct. at 2510)

Special care must be given to summary judgment motions in employment discrimination cases. As the Honorable Mark W. Bennett explained in *Bauer v. Metz Baking Co.*, 59 F. Supp. 2d 896, 900-901 (N.D. Iowa 1999):

> The court has often stated that "summary judgment should seldom be used in employment-discrimination cases." *Crawford v. Runyon*, 37 F.3d 1338, 1341 (8th Cir. 1994) (citing *Johnson v. Minnesota Historical Soc'y*, 931 F.2d 1239, 1244 (8th Cir. 1991); *Hillebrand v. M-Tron Indus., Inc.*, 827 F.2d 363, 364 (8th Cir. 1987), *cert. denied*, 488 U.S. 1004, 109 S. Ct. 782, 102 L. Ed. 2d 774 (1989)); *see also Snow v. Ridgeview Medical Ctr.*, 128 F.3d 1201, 1204 (8th Cir. 1997) (citing *Crawford*); *Helfter v. United Parcel Serv., Inc.*, 115 F.3d 613, 615 (8th Cir. 1997) (quoting *Crawford*); *Chock v. Northwest Airlines, Inc.*, 113 F.3d 861, 862 (8th Cir. 1997) ("We must also keep in mind, as our court has previously cautioned, that summary judgment should be used sparingly in employment discrimination cases," citing *Crawford*); *Smith v. St. Louis Univ.*, 109 F.3d 1261, 1264 (8th Cir. 1997) (quoting *Crawford*); *Hardin v. Hussmann Corp.*, 45 F.3d 262 (8th Cir. 1995) ("summary judgments should only be used sparingly in employment discrimination cases," citing *Haglof v. Northwest Rehabilitation, Inc.*, 910 F.2d 492, 495 (8th Cir. 1990); *Hillebrand*, 827 F.2d at 364).

Thus, summary judgment is rarely appropriate in employment discrimination cases, and should be granted only in "'those rare instances where there is no dispute of fact and where there exists only one conclusion.'" *Id.* (citing *Johnson v. Minnesota Historical Soc'y*, 931 F.2d 1239, 1244 (8th Cir. 1991); *Webb v. St. Louis Post-Dispatch*, 51 F.3d 147, 148 (8th Cir. 1995) (quoting *Johnson*, 931 F.2d at 1244); *Crawford*, 37 F.3d at 1341 (quoting *Johnson*, 931 F.2d at 1244)). Judge Bennett further explained:

> To put it another way, "[b]ecause discrimination cases often depend on inferences rather than on direct evidence, summary judgment should not be granted unless the evidence could not support any reasonable inference for the nonmovant." *Crawford*, 37 F.3d at 1341 (holding that there was a genuine issue of material fact precluding summary judgment); *accord Snow*, 128 F.3d at 1205 ("Because discrimination cases often turn on inferences rather than on direct evidence, we are particularly deferential to the nonmovant," citing *Crawford[*, 37 F.3d at 1341]); *Webb v. Garelick Mfg. Co.*, 94 F.3d 484, 486 (8th Cir. 1996) (citing *Crawford*, 37 F.3d at 1341); *Wooten v. Farmland Foods*, 58 F.3d 382, 385 (8th Cir. 1995) (quoting *Crawford*, 37 F.3d at 1341); *Johnson*, 931 F.2d at 1244.

Keeping these standards in mind, the court now will address the defendants' motion for summary judgment.

IV. LEGAL ANALYSIS

A. Salz's Gender Discrimination Claim Under Title VII and the ICRA

The defendants argue they are entitled to summary judgment on Salz's gender discrimination claim. Salz responds that her gender discrimination claim presents genuine issues of fact for trial.

Title VII claims for gender discrimination must be analyzed under either the direct evidence framework of *Price Waterhouse v. Hopkins*, 490 U.S. 228, 258, 109 S. Ct. 1775, 104 L. Ed. 2d 268 (1989), or the indirect evidence, burden-shifting framework of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-03, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973). "When a plaintiff puts forth direct evidence that an illegal criterion, such as age [or gender], was used in the employer's decision to terminate the plaintiff," the court is to apply the standards enunciated in *Price Waterhouse*, as modified by section 107 of

the Civil Rights Act of 1991, 42 U.S.C. § 2000e-2(m). *Breeding v. Arthur J. Gallagher and Co.*, 164 F.3d 1151, 1156 (8th Cir. 1998) . "Under this modified *Price Waterhouse* standard, a defendant is liable for discrimination upon proof by direct evidence that an employer acted on the basis of a discriminatory motive, and proof that the employer would have made the same decision absent the discriminatory motive is only relevant to determining the appropriate remedy." *Id*.

When a plaintiff is unable to put forth direct evidence of gender discrimination, the court is to analyze the plaintiff's claim under the burden-shifting framework set forth in *McDonnell Douglas*. Under this framework, a Title VII plaintiff has the initial burden of establishing a *prima facie* case of discrimination. *Hill v. St. Louis Univ.*, 123 F.3d 1114, 1119 (8th Cir. 1997). If the plaintiff succeeds in making out a *prima facie* case, then a rebuttable presumption of discrimination arises. *Id*. The burden then shifts to the employer to articulate a legitimate, nondiscriminatory reason for the adverse employment action. *Id*. Once the employer articulates such a reason, the presumption of discrimination disappears, and the plaintiff bears the burden of proving the employer's proffered reason is merely a pretext for discriminatory animus. *Id*. At all times, the plaintiff retains the ultimate burden of proving illegal discrimination occurred. *Ruby v. Springfield R-12 Public Sch. Dist.*, 76 F.3d 909, 912 (8th Cir. 1996).

The court finds Salz has presented direct evidence to support her claim of gender discrimination. The record contains evidence of statements by the person who terminated her employment that he did not believe women should be performing her job, and he had been told by his superior to get her to quit her job. These statements, together with the other facts in the case, satisfy the *Price Waterhouse* standard.

The court also finds Salz has presented a submissible case under the *McDonnell Douglas* standard. To present a *prima facie* case of discriminatory discharge, Salz must

show (1) she was a member of a protected class, (2) she was qualified for the position, and (3) despite her qualifications, she was discharged. *Ruby*, 76 F.3d at 911. On the record before the court, she has met all of these qualifications, thus creating a rebuttable presumption of discrimination. *See Hill*, 123 F.3d at 1119. The defendants attempt to rebut the presumption by articulating what they assert is a legitimate, nondiscriminatory reason for Salz's discharge; namely, that she did not perform the duties of her job properly. In rebuttal, Salz points out that Lallak has never suspended or discharged a male employee for performance deficiencies. She also alleges male coworkers committed the same mistakes she made without being disciplined. In addition, she alleges Lallak refused to provide her with information she needed to perform properly the task that directly led to her discharge. These disputes are adequate to support submission of the question of gender discrimination to the jury. Therefore, the defendants' motion is **denied** on Salz's gender discrimination claim.

C. Salz's Retaliatory Discharge Claim

Salz claims the defendants fired her in retaliation for her filing of a complaint with the Iowa Civil Rights Commission. A similar claim was made by the plaintiff in *Buettner v. Arch Coal Sales Co.*, 216 F.3d 707 (8th Cir. 2000), in which the plaintiff claimed her employer had fired her in retaliation for expressing her belief that the employer had engaged in discriminatory acts. The *Buettner* court explained the requirements for a plaintiff to establish a *prima facie* case of retaliation, as follows:

> Title VII of the Civil Rights Act of 1964, 42 U.S.C.§ 2000e-3, makes it unlawful for an employer to discriminate against an employee, for among other things, "because [s]he has opposed any practice made an unlawful employment practice by this subchapter." In the absence of direct evidence of discrimination, the burden-shifting analysis

of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973), applies to claims of retaliation. *See Womack v. Munson*, 619 F.2d 1292, 1296 (8th Cir. 1980); *see also Cobb v. Anheuser Busch, Inc.*, 793 F. Supp. 1457, 1489 (E.D. Mo. 1990). Under the burden-shifting analysis, the plaintiff must first establish a prima facie case of retaliatory discrimination. *See McDonnell Douglas*, 411 U.S. at 802, 93 S. Ct. 1817. To establish a prima facie case of retaliatory discrimination, a plaintiff must show: (1) she engaged in activity protected by Title VII; (2) an adverse employment action occurred; and (3) a causal connection existed between participation in the protected activity and the adverse employment action. . . .

Once the plaintiff establishes a prima facie case of retaliation, the burden shifts to the employer to produce some legitimate, non-discriminatory reason for the adverse action. *See Womack*, 619 F.2d at 1296. If the employer satisfies this burden, the plaintiff must prove the proffered reason is a pretext for retaliation. *See id.* Ultimately, the plaintiff must establish the employer's adverse action was based on intentional discrimination. *See Ryther v. KARE 11*, 108 F.3d 832, 837-38 (8th Cir. 1997) (en banc) (applying the *McDonnell Douglas* burden shifting analysis in an age discrimination case).

A finding of unlawful retaliation, however, is not conditioned on the merits of the underlying discrimination complaint. *See generally Davis v. State Univ. of New York*, 802 F.2d 638, 642 (2d Cir. 1986). Title VII's prohibition against retaliatory discrimination protects activities ranging from filing a complaint to expressing a belief that the employer has engaged in discriminatory practices. *See, e.g., Wentz v. Maryland Casualty Co.*, 869 F.2d 1153, 1154-55 (8th Cir. 1989) (applying the approach taken under Title VII to claim of retaliatory discharge under the Age Discrimination in Employment Act). A plaintiff need not establish the conduct which she opposed was in fact discriminatory but rather must

> demonstrate a good faith, reasonable belief that the underlying challenged conduct violated the law. *See id.* at 1155.

Buettner, 216 F.3d at 713-14.

There is no question that Salz has satisfied the first two prongs of the *McDonnell Douglas* analysis, but there is a serious issue concerning whether she has established a causal connection between the filing of the civil rights complaint and her discharge. "The requisite causal connection may be proved circumstantially by showing the discharge followed the protected activity so closely in time as to justify an inference of retaliatory motive." *Buettner*, 216 F.3d at 715-16 (citing *Rath v. Selection Research, Inc.*, 978 F.2d 1087, 1090 (8th Cir. 1992)). In this case, Salz's termination occurred two months after she filed her complaint, and 90 days from the time she voiced her complaints concerning discrimination. However, this temporal proximity, standing alone, is insufficient to establish the requisite causal connection. As the *Buettner* court explained:

> Generally, however, more than a temporal connection between protected activity and an adverse employment action is required to show a genuine factual issue on retaliation exists. *See Kiel [v. Select Artificials, Inc.*,] 169 F.3d [1131,] 1136 [(8th Cir. 1999) (en banc)]; *see also, e.g., Feltmann v. Sieben*, 108 F.3d 970, 977 (8th Cir. 1977) (in Title VII retaliatory discharge claim[,] plaintiff fired six months after the complaint; without more, temporal proximity found to be insufficient to show causal link) [footnote omitted]; *Nelson v. J.C. Penney Co., Inc.*, 75 F.3d 343, 346-47 (8th Cir. 1996) (plaintiff fired a month after he filed age discrimination charge failed to establish causal link without evidence in addition to temporal proximity); *Caudill v. Farmland Indus., Inc.*, 919 F.2d 83, 86-87 (8th Cir. 1990) (closeness in time between plaintiff's filing of charges and plaintiff's discharge was a mere "slender reed of evidence"; any conclusion of temporal proximity would be "rank speculation"). [Footnote omitted.]

Buettner, 216 F.3d 716.

Salz argues her complaints of discrimination were followed by disciplinary actions that were pretexts for retaliation against her due to her complaints. The plaintiff in *Bassett v. City of Minneapolis*, 211 F.3d 1097 (8th Cir. 2000), similarly claimed she was targeted for discipline in retaliation for her complaints of racial discrimination. The court found the evidence that Bassett was "sharply reprimanded for minor workplace rule infractions, denied personal requests granted to other specialists, and secretly taped by [a superior] when she talked with [the superior] on the phone" was sufficient, together with the temporal proximity of Bassett's discharge, to raise a question of fact as to whether her discharge was predicated upon racial discrimination. *Bassett*, 211 F.3d at 1107.

The defendants argue Salz's claim that the disciplinary actions against her, and her discharge, were retaliatory in nature is not supported by anything in the record. They point out that the record establishes Lallak, the person primarily responsible for terminating Salz's employment, was not told Salz had filed the complaint. Salz responds that Lallak was listed as a person who provided information for Stellar's response to the complaint, and she argues this at least raises the inference that Lallak must have known about the complaint. She also points to her statements in the record that Lallak refused to speak with her after she filed the complaint, and she argue other decision-makers at the company knew of the complaint when they participated in the decision to terminate her employment.

The court finds Salz has just barely made out a *prima facie* case of retaliation, shifting the burden to the defendants to proffer a legitimate, non-discriminatory reason for Salz's termination. The court has already ruled for Salz on this issue in its previous analysis, finding the defendants have failed, for summary judgment purposes, to meet this burden. Therefore, the defendants' motion is **denied** as to Salz's retaliation claim.

IV. CONCLUSION

Based upon the foregoing analysis, the defendants' motion for summary judgment (Doc. No. 17) is **granted in part and denied in part**. Their motion is **granted** as to Count II, and as to the claim for disability discrimination in Count III. The motion is **denied** as to all other claims.

IT IS SO ORDERED.

DATED this 10th day of March, 2004.

PAUL A. ZOSS
MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT